

**TITLE 2. ADMINISTRATION
DIVISION 7. SECRETARY OF STATE
NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Secretary of State proposes to add Sections 22600, 22600.1, 22600.2, 22600.3, 22600.4, 22600.5, 22600.6, 22600.7, 22600.8, 22600.9, 22601, 22601.1, 22601.2, 22601.3, 22601.4, 22601.5, 22601.6, 22601.7, 22601.8, 22601.9, and 22602 of Chapter 13 to Division 7 of Title 2 of the California Code of Regulations. These sections outline the general operating procedures and rules of the filing office and expand the acceptable method for submittal of Uniform Commercial Code filings and search requests from paper documents and forms to include electronic transmission of information.

PUBLIC HEARING

The Secretary of State will hold a public hearing on the proposed action from 9:00 a.m. to noon on October 27, 2003, at the Office of the Secretary of State, 1500 11th Street, Multipurpose Room, Sacramento, California 95814. The room is wheelchair accessible. At the hearing any person may present statements or argument orally or in writing relevant to the proposed action described in the Information Digest below.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on October 27, 2003. Only written comments received at the Office of the Secretary of State by that time shall be considered. Submit written comments to the contact person listed below.

AUTHORITY AND REFERENCE

Section 9526 of the Commercial Code requires the Secretary of State to adopt rules to implement Division 9 of the Commercial Code. The proposed regulations would implement, interpret and make specific Division 9 of the Commercial Code.

INFORMATION DIGEST AND POLICY STATEMENT OVERVIEW

In 1990 the Permanent Editorial Board for the Uniform Commercial Code with the support of its sponsors, the American Law Institute and the National Conference of Commissioners on Uniform State Law, established a committee to study Article 9 of the Uniform Commercial Code and to make recommendations to the Board. In 1992 the study committee recommended that the Board

create a drafting committee to reorganize Article 9 of the Uniform Commercial Code and recommended various changes. The drafting committee met between 1993 and 1998, until the sponsors approved the new, revised Article 9. Senate Bill 45, Chapter 991, Statutes of 1999, effective July 1, 2001, repealed the existing provisions of the California Commercial Code, hereinafter Commercial Code, and enacted the provisions in revised Article 9.

The revisions to the Commercial Code, specifically Section 9526, require the Secretary of State to adopt and publish rules to clarify and implement the legislative changes. In adopting, amending, and repealing filing office rules, the Secretary of State is required to consult with and consider the rules and practices of the filing offices in other jurisdictions and consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, currently known as the International Association of Commercial Administrators.

The proposed regulations outline the general operating procedures and rules of the filing office and expand the acceptable method for submittal of Commercial Code filings and search requests from paper documents and forms to include electronic transmission of information. The adoption of the proposed regulations would also trigger lower filing and search fees for services accessed electronically, as established in Section 9525 of the Commercial Code and Section 12194 of the Government Code. Parties filing financing statements and liens and searching the database of filings would benefit from the proposed regulations, as the provisions are similar to those adopted by other state filing offices which will minimize confusion for those accessing services in multiple jurisdictions.

AVAILABILITY OF THE TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person listed below.

DISCLOSURE REGARDING THE PROPOSED ACTION

The Secretary of State has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: Section 9525 of the Commercial Code and Section 12194 of the Government Code specify that the fee for either a filing or search request communicated by a medium other than that communicated in writing that is authorized by regulation shall be five dollars (\$5). The fee for filing financing statements and amendments when the record is communicated in writing is ten dollars (\$10) for records consisting of one or two pages and twenty dollars (\$20) for records consisting of more than two pages. The fee for a search communicated in writing is ten dollars (\$10). Thus, customers using electronic means to request filings or search requests will experience lower costs for conducting individual business transactions. The Secretary of State anticipates a decline in the revenue collected after electronic transmittals are authorized by the proposed regulations. However, the extent of the decline in revenue is unknown.

- Cost to any local agency or school district, which must be reimbursed in accordance with Section 17561 of the Government Code: None.
- Other non-discretionary cost or savings imposed upon local agencies: None.
- Cost or savings in federal funding to the state: None.
- Significant, statewide adverse economic impact directly affecting business, including the ability of California business to compete with businesses in other states: None.
- Cost impacts that representative private persons or businesses would necessarily incur in reasonable compliance with the proposed action: None. The Secretary of State is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Adoption of these regulations will not do any of the following: (1) create nor eliminate jobs within California; (2) create new business or eliminate existing business within California; nor (3) affect the expansion of business currently doing business within California.
- Significant effect on housing costs: None.

BUSINESS REPORTING REQUIREMENT

The business reporting requirement is not applicable to the proposed regulations.

SMALL BUSINESS DETERMINATION

The proposed regulations may affect small business. There are approximately 1.8 million secured parties of record in the Uniform Commercial Code database operated by the Secretary of State. Affected businesses are secured party lenders filing financing statements and liens, many of which have existing multiple Uniform Commercial Code filings of record and conduct numerous transactions annually, including searching debtor information in the database. The Secretary of State is unable to determine the number of businesses that would be considered small businesses.

CONSIDERATION OF ALTERNATIVES

The Secretary of State must determine that no reasonable alternative considered by him or that has otherwise been identified and brought to his attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State shall have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this notice is published in the Notice Register,

the rulemaking file consists of this Public Notice, the Text of the Proposed Regulations, and the Initial Statement of Reasons. For further information regarding the inspection of the rulemaking file, contact the Regulation Coordinator at (916) 653-3345 or the designated back-up contact, Alicia Stewart, at (916) 653-3305. Copies of the rulemaking file may be obtained at www.ss.ca.gov/business or by contacting the contact person listed below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the close of the public comment period, the Secretary of State may adopt the proposed regulations substantially as described in this notice. If the Secretary of State makes modifications which are sufficiently related to the originally proposed text, the modified text with changes clearly indicated shall be available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person listed below. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available. Once the final statement of reasons is prepared in accordance with subdivision (a) of Section 11346.9 of the Government Code copies may be obtained at www.ss.ca.gov/business or by contacting the contact person listed below.

CONTACT PERSON

Direct all written inquiries and requests for copies of the proposed text of the regulations, initial statement of reasons, modified text of regulations, if any, or other information upon which the rulemaking file is based to: Lisa B. Niegel, Regulation Coordinator, Office of the Secretary of State, Business Programs Division, 1500 11th Street, 2nd Floor, Sacramento, California 95814 or Alicia Stewart, Office of the Secretary of State, Business Programs Division, 1500 11th Street, 2nd Floor, Sacramento, California 95814.